



PLANNING COMMISSION REGULAR MEETING
WEDNESDAY, AUGUST 10, 2016
5:30 PM

[Johnnie Roark](#), Community Development Director

153A Morton Lane, Appomattox, VA 24522
www.AppomattoxCountyVA.gov

Call to Order

Determination of Quorum

Citizen's Comment Period

Approval of Minutes

1. [16-0170](#) May 11, 2016 Minutes
The minutes from the regular meeting in May are available for your approval.
Suggested Actions: Approve Recommendation
Documents: [May 11_Minutes.docx](#)

Discussion of Petition/Public Hearing

Old Business

New Business

2. [16-0166](#) Overview of New Agenda Format
Mr. John Spencer will be available to provide an overview and answer questions concerning the new web-based agenda format that we will be utilizing from this point forward.
Suggested Actions: No Suggested Action
3. [16-0168](#) Discussion-Temporary/Directional Signs
Over the past couple of months, staff has met with the owners of WolfPAC, located at 618 Country Club Road concerning temporary/directional signs they would like to use to assist patrons in locating the facility. There are at least four intersections impacted coming from the west and at least two intersections impacted coming from the east.
As the ordinance is written, the argument could be made that these signs are actually "off-premise" signs, which are only permissible in commercial or industrial zoned areas. None of the intersections impacted meet this criteria. VDOT regulations concerning outdoor advertising also becomes an issue.
One could argue that the signs are "temporary/directional", however, time limitations become an issue. A temporary sign permit is only good for a 30 day period, 3 times per year (total 90 days). A temporary permit would need to be approved for each individual property owner (each site). The issue of whether VDOT would consider them outdoor advertising would still be unresolved.
Suggested Actions: No Suggested Action
Documents: [WolfPAC_Sign_PC8102016.pdf](#), [WolfPAC_Sign_Map.pdf](#)
4. [16-0169](#) Discussion-Cemetery Definition
With the update to the Zoning Ordinance in 2014, the land use category "cemetery" was moved to the conditional use list A-1, R-1, R-2, R-3, and V-1 zoning districts. Prior to this change, the use was a permitted use in A-1, a conditional use in R-2 and V-1 and not allowed in R-1. Past practice was to request that in an A-1 district for example, issue a zoning permit and request that a survey be completed so that our records could pick up the cemetery. This worked pretty well for the most part.
The definition for cemetery remained the same when we updated the ordinance. The term is defined as "a privately or church owned/or operated place of burial of the dead, where lots may be sold and perpetual care of the graves may be furnished."
Staff has encountered an issue of when enforcing the ordinance as it is today and applying this definition to a single event (i.e. when a loved one passes and the family wants to create a "cemetery" on the family farm). As you can imagine, this is a difficult time for those involved and hearing that a conditional use permit with a three month turnaround is not what grieving family needs or wants to hear.
Staff would recommend a two part solution: 1). amend the definition slightly and 2). add to the Additional Regulations section certain requirements for the creation of the cemetery, but also

exempting certain "family" types from the CUP requirement in the A-1 district. You will find a sample attached.

Suggested Actions: No Suggested Action

Documents: [Proposed Definition Change_Cemetery_2016.pdf](#)

5. [16-0167](#)

Discussion_Legislative Changes to Proffers

At the July 18th meeting of the Board of Supervisors, Mr. J. G. Overstreet, County Attorney provided a memorandum analyzing the latest change to Section 15.2-2303.4 of the Code of Virginia pertaining to the acceptance of proffers during conditional rezoning petitions.

Attached you will find a copy of the new Code section and a copy of Mr. Overstreet's memorandum. The changes to the Code language impact proffers associated with new residential subdivision development. During my time in Appomattox, I have not processed a petition for conditional rezoning for a residential development.

Mr. Overstreet feels that we may need to amend our ordinance to contain language similar to the Code of Virginia. Caution is urged since larger localities are impacted more than, say Appomattox, and legal challenges and/or additional changes to the legislation are pending.

Suggested Actions: No Suggested Action

Documents: [Memo_Proffers_New Residential Development.pdf](#)

Adjournment

MINUTES

APPOMATTOX COUNTY PLANNING COMMISSION MEETING APPOMATTOX, VIRGINIA

Wednesday, May 11, 2016

Members Present: (Quorum)

George Almond
Steve Conner
Sara Carter
Earl Dickerson
Joshua Mills
Kevin O'Brien

Members Absent:

Susan Hudson

Also Present:

Johnnie Roark, Director of Community Development

Mr. George Almond, Chairman, called the meeting to order at 5:30 p.m.

Mr. Almond circulated the attendance sheet.

Citizens Comment Period

No citizens spoke.

Public Hearing

RZ16-0189/CUP16-0199-Eugenne P. Williams (owner), Dustin Williams (applicant) has applied to conditionally rezone property from A-1, Agricultural Zoning District to B-2, Limited Commercial Zoning District and obtain a conditional use permit within the new zoning district. . The purpose of the petition is for the applicant to locate an outdoor theatre (commercial outdoor entertainment) on the property. The parcel is located near 524 Country Club Road, in the Appomattox area. Tax Map #75 (4) 10 (part of); Total Acres: 1.61 acres.

Mr. Almond opened the public hearing at 5:31 p.m. and asked for the staff report.

Mr. Roark gave an overview of the petition, explaining that this was a two part petition. The first part was the conditional rezoning, which is accompanied by a proffer statement from the applicant.

PROFFER STATEMENT

I, Dustin Williams, applicant for Wolfbane Productions, am seeking to conditionally rezoning approximately 1.6 acres of area on Tax Map Identification Number 75-4-10 (part of) from A-1, Agricultural Zoning District to B-2, Limited Commercial Zoning District, for the purpose of locating an outdoor theatre (Commercial Outdoor Entertainment). I hereby proffer the following conditions:

- 1.) All Permitted Uses in the B-2 zoning district are hereby proffered out, thereby making them unlawful.*
- 2.) All Conditional Uses in the B-2 zoning district are hereby proffered out thereby making them unlawful,*

except for the following uses:

- a. Bed and Breakfast*
- b. Commercial Indoor Entertainment*
- c. Commercial Outdoor Entertainment*
- d. Two-Family Dwelling (duplex)*

Conditional Uses are subject to further approval per Appomattox County Zoning Ordinance. All other conditional uses by the Appomattox County Zoning Ordinance are not allowed subject to the amendment of this proffer statement.

The owner(s) and applicant(s), for themselves, their heirs, personal representative(s), assigns, grantees, and other successors in interest or title, voluntarily and without any undue influence by, requirement by or exaction from Appomattox County or its governing body, proffers these conditions acknowledging that the proposed rezoning itself gives rise to the need for the conditions and that such conditions are in conformity with the County's Comprehensive Plan. The applicant(s) and owner(s) further acknowledge that the Appomattox County is in no way obligated to rezone the subject property; however; if the property is rezoned, then the proffered conditions shall continue in full force and effect unless modified by subsequent amendment to the zoning ordinance.

This proffer statement supersedes any and all previously submitted proffers.

The second part was a conditional use permit in which staff has recommended the following conditions.

Staff Recommended Conditions:

- 1. Hours of Operation: All outdoor live performance events shall only take place between the hours of 11:00 a.m. and 11:00 p.m. Sunday through Thursday. Friday and Saturday all outdoor live performance events shall only take place between the hours of 11:00 a.m. and 11:30 p.m. There is no time limitation on events/activities, associated with the performing arts center, taking place inside of an enclosed building or not associated with live performance events.*
- 2. Setback: The stage(s) and sound amplification equipment shall not be oriented toward any residence located within one hundred (100) feet of a property line. Furthermore, to the extent possible, sound amplification equipment shall be oriented so that sound is directed away from the closest residential property. For purposes of this permit, "sound amplification equipment" means bullhorns, small portable sound systems, microphones, and amplified musical instruments or any similar device.*
- 3. Noise: A maximum noise level of eighty (80) decibels shall be permitted as measured at the property line of the nearest residential property. Measurement shall be made with a Type 1 or Type 2 calibrated sound-level meter utilizing the A-weighting scale and the slow meter response as specified by the American Standards Association.*
- 4. Parking: Adequate off-street parking shall be provided for events and shall include accommodations for patrons having physical disabilities. Minimum spaces provided shall be fifty (50) plus one (1) space per employee or event staff. Ingress and egress shall be addressed through the Virginia Department of Transportation (VDOT). At least one (1) entrance shall be constructed to current VDOT minimum standards for commercial entrances.*
- 5. Traffic: Single events anticipated to attract greater than 250 patrons shall be coordinated with the Director of Public Safety, VDOT and the Sheriff's Department. A traffic control plan may be required upon request by*

the Director of Public Safety, Sheriff or VDOT.

6. Lighting: All light and glare shall be directed on-site to ensure surrounding properties are not adversely impacted by an increase in direct or indirect ambient lighting levels. Ambient lighting shall not exceed 0.5-foot candle power at any property line.

7. Food Vendors: All food vendors operating in conjunction with any live performance event must comply with all Virginia Department of Health regulations. If electrical power is needed, the Appomattox County Building Official shall be notified, proper permitting obtained and inspections shall be completed prior to the event.

8. Alcohol: Event organizers planning to sell beer or wine must apply directly to and receive a permit from the Virginia Department of Alcohol Beverage Control. A copy of said permit shall be provided to the zoning administrator in advance of the event.

9. Tents: The erection and use of any tent or canopy in excess of 900 square feet shall require a building permit and inspection by the Appomattox County Building Official. All tents or canopy shall be secured at each corner by using a minimum 70-pound weight, 10-gallon water ballast or other suitable tie-down.

10. Solid Waste: Sufficient solid waste containers should be provided depending on the size of the event. Solid waste containers should not be visible from the public right of way or from any adjoining residential property.

11. Restrooms: Adequate restroom facilities should be provided either permanently or on a temporary basis. All portable restroom facilities should be removed within three (3) business days following the end of a live performance event or a performance series. Temporary restroom facilities should not be visible from the public right of way or from any adjoining residential property.

12. Public Safety: Prior to any single live performance event anticipated to have 250 or greater patrons, the owner/applicant shall confer with the local fire department and rescue squad to ensure that adequate safety measures are in place to effectively manage emergency situations. If emergency services support is determined to be necessary, the entirety of the cost of said support services shall be assumed by the owner/applicant.

13. Complaints: Should the applicant receive complaints of violations of the conditions during a live performance event the complainant shall be directed to the Sheriff's Department. The Sheriff's Department will then follow normal and customary procedures to resolve the matter. All complaints concerning lighting, noise or traffic shall be addressed immediately by the applicant, with a written statement detailing such complaint and corrective action being supplied to the zoning administrator within fifteen (15) days of the event. Complaints of violations outside of a live performance event shall be submitted to the zoning administrator. The zoning administrator shall contact the applicant within seven (7) days. The applicant shall provide the zoning administrator with a written statement detailing the complaint and corrective action within fifteen (15) days of notification.

14. Term of Permit: This conditional use permit shall be limited to a term of not more than twenty-four (24) months. Prior to the conclusion of this time period, the Planning Commission shall review the status of the permit and make a recommendation to the Board of Supervisors; whether to renew or revoke the conditional use permit. Any subsequent renewals may be either for a limited term or general approval with no time limit, at the discretion of the Board of Supervisors. Any and all other conditions may be amended, deleted, or expanded only during this review period.

Mr. Almond asked if anyone was present to speak either for or against the petition.

Mrs. Wanda Williams, 524 Country Club Road, spoke in support of the petition.

Joint Planning Commission
Minutes

Mr. Jack Evans, 762 Country Club Road, stated that he is the closet neighbor and the he is both for and against the petition. He has three concerns (1) noise, (2) ownership and (3) if it becomes a “corporate thing”. Mr. Evans noted that he has reached an agreement with the Williams’ concerning using a small area of his lot for the entrance and a portion of his land for overflow parking. He supports Dustin and Gene in their endeavor but fears it could get out of hand.

Mr. Almond asked if anyone else wished to speak. Hearing none, the public hearing was closed at 5:43 p.m.

Discussion RZ16-0189/CUP16-0199-Eugene P. Williams (owner), Dustin Williams (applicant)

Mr. Almond asked the Commission if there was any discussion or any questions. Mr. Almond noted that this was a two-fold petition and the conditional rezoning would be handled first.

Mr. Steve Conner asked about the status of the company and the ownership of the land. Mr. Roark replied that the land, even though it was being subdivided, would remain in the ownership of Mr. & Mrs. Eugene Williams. There was some discussion concerning the proffers and the zoning of the land and whether or not that was tied to the land ownership.

Mr. Earl Dickerson stated that he did not agree with putting commercial zoning out in a residential area. Mr. Conner agreed and stated that the comprehensive plan did not show this as a growth area. Mr. Roark noted that the project site was in a growth area and that the border was Country Club Road. Ms. Carter stated that she was interested in working with the developer and thought the conditions and/or proffers needed to be examined closely to help mitigate the impact. Mr. O’Brien stated that he thought this was a good project and the traffic would be mitigated by having traffic come from two directions (Country Club Road and Purdum Mill Road). Mr. O’Brien further stated that this type of venue was popular for its location, kind of out of the way. The type of people that would attend a show here would not necessarily want to go to a theatre in town.

After some discussion of the proffers, Mr. O’Brien motioned, with a second by Ms. Carter, that for reason of public necessity, convenience, general welfare, and good zoning practice, the Appomattox County Planning Commission moves to recommend approval of the conditional rezoning petition (RZ16-0189) Dustin Williams (Eugene Williams) from A-1, Agricultural to B-2, Limited Commercial, as submitted with proffer statement.

The motion carried 4-2 (Conner, Dickerson dissenting).

Mr. Almond stated that the Planning Commission must now consider the conditional use permit for the outdoor theatre.

There was some discussion about trying to mitigate the noise issue that Mr. Evans spoke about during the public hearing. Mr. Conner asked if the permit could be limited by the number of events per year.

Mr. Roark referred to the proposed conditions, which discussed the noise level as measured at the property line, and how this condition incorporates the County’s noise ordinance. Ms. Carter stated that the two year limit is a better way to control the use than to put a limit on the number of events per year. Mr. Roark stated that by giving the permittee a two-year trial period, the Planning Commission and Board of Supervisors would have a solid track record to rely upon during the review.

Joint Planning Commission
Minutes

Mr. Dickerson reiterated that he would like to see the facility located in town where there is better parking and traffic control along with water and sewer. He stated that all the Commissioner's want to see this be a success for the good of the community.

Mr. Evans then spoke about his concern with the ownership. After some discussion, it was decided that Mr. Evans would be more comfortable with Gene and Wanda Williams continuing to own the property.

Mr. Conner asked to review the condition concerning complaints. Mr. Roark reviewed this condition stating that complaints would be handled either by the Sheriff's office or by the zoning administrator depending on when the complaint occurs. Complaints would be logged and would be part of the report in two years when the permit comes up for review.

Mr. Almond asked if there was any further discussion. Hearing none, he asked for a motion.

Ms. Carter motioned, with a second by Mr. O'Brien that for reason of public necessity, convenience, general welfare, and good zoning practice, the Appomattox County Planning Commission moves to recommend approval of the conditional use permit (CUP16-0199) Dustin Williams (Eugene Williams) with the staff recommended conditions plus the amended condition #15 concerning the ownership.

The motion carried unanimously.

Public Hearing

Comprehensive Plan Update

Authority for local government planning in Virginia is contained in Title 15, Section 15.2-2223 through 15.2-2232 of the Code of Virginia. This proposed plan was prepared in accordance with these provisions. By State law, this plan shall be general in nature. It shall designate the approximate location, character, and extent of each feature shown and may indicate where existing lands or facilities are proposed to be extended, removed, relocated, vacated, narrowed, abandoned, or changed in use. Generally, a comprehensive plan should look a minimum of twenty (20) years into the future. The planning horizon for this update is 2040. Adjustments to the plan may be made at any time, subsequent to the appropriate review, study, public notice and formal amendment by the Appomattox County Board of Supervisors.

The preparation and update of the Appomattox Comprehensive Plan represents an evolution in thinking based on current planning trends, as well as, local socio-economic trends. As a place of national historical significance, Appomattox County must preserve its heritage, while encouraging new development of an appropriate scale and character. As with past iterations of the Comprehensive Plan, the challenge will not end with the adoption of this plan, but will continue as the county and towns undertake revisions of their respective zoning, subdivision, and other ordinances to implement the recommendations of this document.

Major revisions to this plan include changes to the Future Land Use Map and inclusion of detailed transportation project forecasting.

Mr. Almond opened the public hearing at 6:06 p.m. and asked if anyone was present to speak either for or against the Comprehensive Plan Update.

Hearing none, Mr. Almond closed the public hearing at 6:07 p.m.

Discussion of the Comprehensive Plan Update

Mr. Roark stated that he would answer any questions that the Planning Commission had. Mr. Almond stated that this has been in the works for several months. Mr. Roark noted that Mr. Almond went through the goals and objectives as requested at the previous month's meeting. The review identified five or six objectives that needed to be removed.

Mr. O'Brien motioned, with a second by Mr. Conner, to recommend approval of the Comprehensive Plan Update dated May 4, 2016 to the Board of Supervisors.

The motion carried unanimously.

Informational Items

Mr. Roark asked if the Planning Commission wanted to cancel the June meeting. The consensus of the Planning Commission was to cancel unless a petition was pending.

Adjournment

Having no further business, Mr. Almond asked for a motion to adjourn.

Ms. Carter made a motion, with Mr. O'Brien seconding, that the meeting be adjourned.

The motion carried unanimously.

The meeting was adjourned at approximately 6:13 p.m.

George Almond, Chairman
Appomattox County Planning Commission

Attest:

Johnnie Roark
Director of Community Development

Chapter 19.6-Zoning

17. Private Drive Signs: On-premises private residential drive signs limited to one (1) per drive entrance, not exceeding two (2) square feet in total area. Language on the sign shall be limited to “private drive” and/or the address of any residences utilizing the private drive.

§19.6-88.7 Temporary Signs

The following signs and displays may be erected only after obtaining a temporary sign permit from the Zoning Administrator. The temporary sign permit shall cite the applicant’s stated purpose for the sign, the size, type, and configuration of the sign, and the time period the sign is intended to be displayed as well as any other information necessary to allow the Zoning Administrator to issue the permit. Temporary sign permits shall be issued for thirty (30) day periods, when in the opinion of the Zoning Administrator such sign or display will be in the public interest and would not result in damage to private property. The sign permit may be extended for one (1) thirty (30) day period. Such temporary sign permits may be issued no more than three (3) times in a calendar year for the same business or event. If a temporary sign is not removed by the expiration of the time limitation, then the Zoning Administrator may remove the sign or display and charge the cost of the removal to the individual applicant or responsible party.

1. The cumulative area for any temporary sign shall not exceed thirty-two (32) square feet.
2. Commercial Promotional Signs: Special sales promotion displays in a district where such sales are permitted, including displays incidental to the opening of a new business and special one-time auctions or real or personal property.
3. Commercial Banner: Banners when used in conjunction with the opening of a new business or an establishment going out of business in any commercial or industrial district. Limit one (1) banner per business.
4. Residential Banner: Banners when used in conjunction with grand openings and/or initiation of sales or leasing of lots and/or dwelling units within a newly developing residential project.
5. Temporary Portable Sign: Temporary portable signs, such as “A-frame” signs or changeable copy signs, which are intended to identify or display information pertaining to an establishment for which a permanent free-standing signage has not been established. Such signs shall be removed upon installation of the permanent free-standing sign or within the limitations of the temporary sign permit, whichever occurs first.
6. Moored Balloon and/or Floating Signs: Moored balloon and floating signs tethered to the ground or a structure, provided that the size, type, location, and duration of such sign shall be approved at the sole discretion of the Zoning Administrator.

Chapter 19.6-Zoning

fixed to the ground, may be erected on each street on which the area abuts, provided such sign structure does not extend beyond the lot line nor shall such signs be located closer than seventy-five (75) feet from each other. Any architectural or decorative material to support or enhance the sign face may not exceed twenty-five (25) percent of the sign face area. Sign bases, uprights, poles, or other support located under the sign shall not count toward the calculation. The aggregate face area shall not exceed twenty-four (24) square feet for the first business or tenant. The aggregate face area may be increased in increments of four (4) square feet for each subsequent business or tenant up to a maximum aggregate face area of three hundred (300) square feet along Richmond Highway or one-hundred sixty (160) square feet for all others.

6. Signs may be illuminated by either backlighting or direct light provided no light from any illuminated sign shall cause direct glare on to any adjoining property or public right-of-way.
7. Directional signs, each not exceeding four (4) square feet in area and four (4) feet in height may be displayed as needed to control egress and ingress in a safe and proper manner.
8. One sign with the word "open" (neon or otherwise) shall be permitted per use, provided the sign does not exceed four (4) square feet. Said sign shall not count towards the maximum allowable sign area.

§19.6-88.13 Off-Premise Signs

Off-premise signs shall be allowed in the following Zoning districts: (B-1), General Business, (M-1), Industrial, and (IP) Planned Industrial subject to the following regulations:

1. No off-premise sign shall be located within a 500 foot radius of an existing off-premise sign, or an off-premise sign for which a valid permit has been obtained, but not yet erected.
2. No off-premise sign shall be located within 300 feet of any residential Zoning district, public square, park, school, library, or religious assembly property.
3. No off-premises sign shall be allowed to be installed on any roof structure.
4. Side by side, double, and/or multi-decker off-premise signs shall be prohibited.
5. Any off-premises sign must have a minimum sign setback of forty (40) feet from the centerline of any public right-of-way, or fifteen (15) feet from the front property line, whichever is greater. Any off-premises sign shall have a minimum side and/or rear setback of fifteen (15) feet.
6. The maximum size of any off-premises sign on a lot shall be 378 square feet plus five (5) percent for embellishments.

Chapter 19.6-Zoning

7. There shall be only one (1) sign face pointing in each direction. Multiple-tiered signs shall be prohibited.
8. Sign height for off-premises signs shall not exceed forty (40) feet above average grade.
9. All off-premises signs shall be maintained by the owner of the sign.
10. No off-premise sign shall be erected, rebuilt, altered, or relocated without a building permit and sign permit.

§19.6-89 Site Development Plans

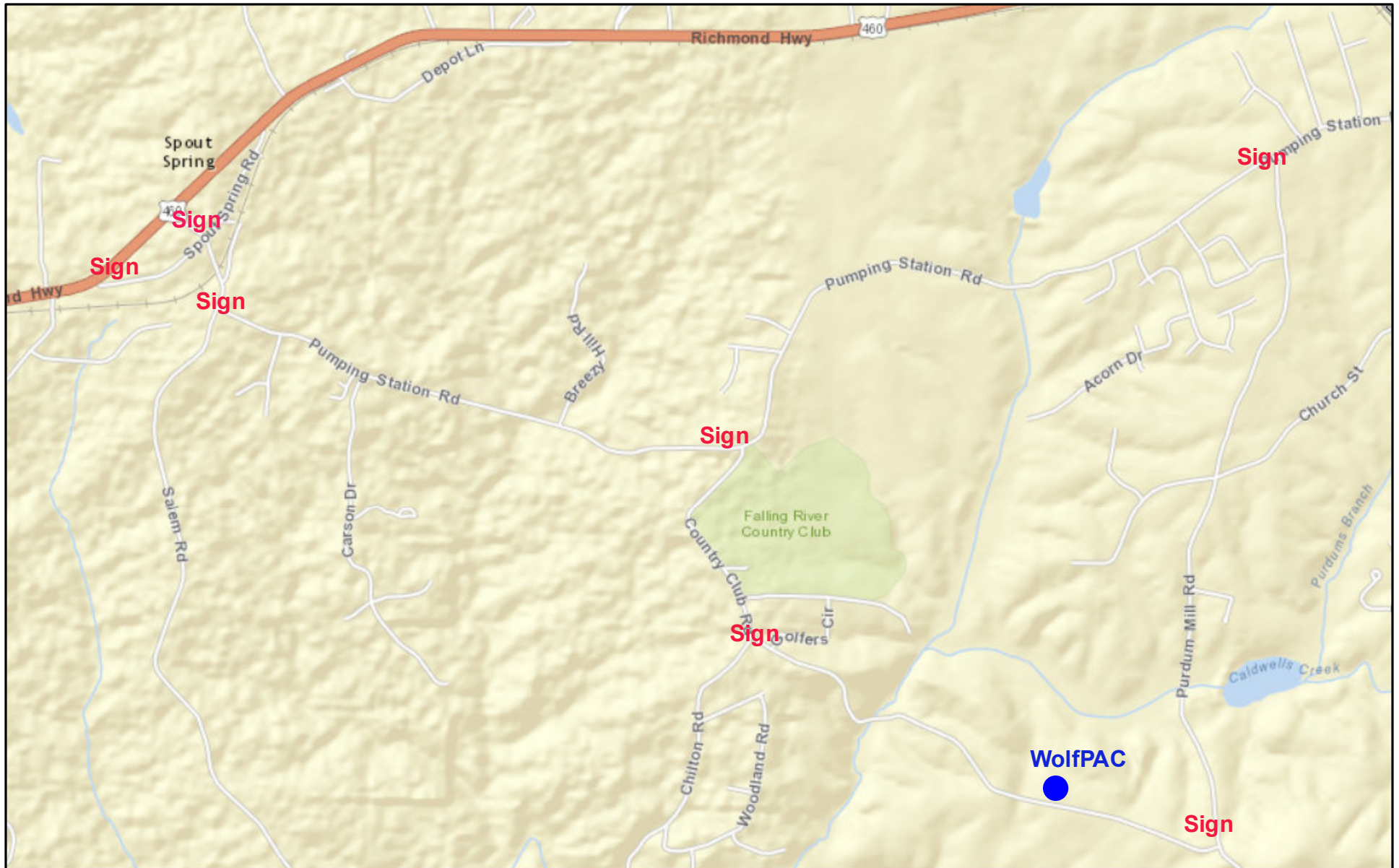
§19.6-89.1 Plan Required

A site development plan shall be required and shall be submitted for the following:

1. New development in every Zoning district, including uses approved as special exemptions, except for single family and two family dwelling units on individual lots.
2. The conversion of any single family or two family dwelling units to any other use, or a higher intensity residential use, or the conversion of any building or property to a different category (e.g. commercial to industrial).
3. New public buildings, except for minor utility services.
4. Uses involving a structure requiring review by the Planning Commission under Section 15.2-2232, Code of Virginia, (1950), as amended.
5. Additions or modifications to buildings or uses, except single family or two family dwelling units, resulting in an increase of 1000 square feet or greater in area.
6. The conversion of any property from fee simple ownership to a condominium form of ownership.
7. The use or development of any parcel conditionally rezoned, where any of the conditions accepted and attached to the parcel apply to the physical arrangement or design of the site.

Site development plans required by the county shall be prepared by a professional engineer, architect, or land surveyor who is registered by the Commonwealth of Virginia and is conducting their practice in accordance with the rules and regulations of the Code of Virginia (1950), as amended. More stringent requirements may be established by the Appomattox County Code or by the Code of Virginia (1950). Developments resulting in 1000 square feet or less in area shall be exempt from the requirement of a professional site planner; however, the owner/developer shall be responsible for submitting a plan that meets all other requirements of the code.

WolfPAC Sign



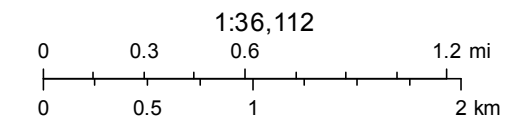
August 3, 2016

pointLayer

● Override 1

□ Town Boundary

□ County Boundary



Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand),

Proposed Definition:

Cemetery-Land used for or dedicated to the burial of the dead, whether privately owned, church owned, or commercially owned. This includes columbaria, crematoriums, mausoleums, and any associated facilities used for bereavement, sales and/or maintenance.

Proposed Additional Regulations:

1. Any cemetery used solely for the purpose of interring members of a family on private property shall be exempt from the requirement of obtaining a conditional use permit in the A-1 zoning district.
2. The location of any new cemetery shall be sufficiently documented by a land survey, recorded in the office of the Clerk of the Circuit Court, so as to inform prospective and future property owners of the presence and location of such cemetery.
3. The minimum lot size for a cemetery lot shall be one-half acre. No road frontage shall be required for lots designated on a survey as a "cemetery lot".
4. An easement for ingress/egress shall be provided on the survey at a minimum width of 20 feet.

Another alternative would be to amend the ordinance and move "cemetery" to the Permitted Use category in A-1.

MEMORANDUM

TO: APPOMATTOX COUNTY BOARD OF SUPERVISORS
FROM: J. G. OVERSTREET, COUNTY ATTORNEY
RE: NEW PROFFER LEGISLATION
DATE: JULY 5, 2016

I have been asked to comment on new legislation adopted by the General Assembly which became effective July 1, 2016, (i.e. 15.2-2303.3 Code of Virginia, copy attached), regarding the use of proffers in the conditional zoning process.

There has been a considerable outcry from Zoning Administrators and Local Government Attorneys throughout the state regarding this code provision. The general consensus is that the purpose of the statute is to prevent localities from exacting unreasonably large amounts of cash proffers as a cost for approval of conditional zoning projects which is tantamount to taxation. While the provisions of the Appomattox county Conditional Zoning Ordinance do not allow for cash proffers, the statute is broad and does have some application to our county.

The statute is limited in scope in that it applies to conditional rezoning regarding "new residential development" and "new residential use"; but it also applies to all proffers, not just cash proffers.

The basic thrust of the statute is the prohibition of the locality "requesting" or "accepting" an "unreasonable proffer"; Subsection C. defines an unreasonable proffer. Section D. sets forth the appeals process for someone aggrieved.

Conditional zonings for residential developments in Appomattox County are rare. Mr. Roark advises me that he has not had such an application since he has been Zoning Administrator. While I do not believe that our Zoning Ordinances would need substantial changes, some reference should be made to this legislation. I would suggest referring the matter to the Planning Commission.

newlaw

Code of Virginia
Title 15.2. Counties, Cities and Towns
Chapter 22. Planning, Subdivision of Land and Zoning

§ 15.2-2303.4. Provisions applicable to certain conditional rezoning proffers.

A. For purposes of this section, unless the context requires a different meaning:

"New residential development" means any construction or building expansion on residentially zoned property, including a residential component of a mixed-use development, that results in either one or more additional residential dwelling units or, otherwise, fewer residential dwelling units, beyond what may be permitted by right under the then-existing zoning of the property, when such new residential development requires a rezoning or proffer condition amendment.

"New residential use" means any use of residentially zoned property that requires a rezoning or that requires a proffer condition amendment to allow for new residential development.

"Offsite proffer" means a proffer addressing an impact outside the boundaries of the property to be developed and shall include all cash proffers.

"Onsite proffer" means a proffer addressing an impact within the boundaries of the property to be developed and shall not include any cash proffers.

"Proffer condition amendment" means an amendment to an existing proffer statement applicable to a property or properties.

"Public facilities" means public transportation facilities, public safety facilities, public school facilities, or public parks.

"Public facility improvement" means an offsite public transportation facility improvement, a public safety facility improvement, a public school facility improvement, or an improvement to or construction of a public park. No public facility improvement shall include any operating expense of an existing public facility, such as ordinary maintenance or repair, or any capital improvement to an existing public facility, such as a renovation or technology upgrade, that does not expand the capacity of such facility. For purposes of this section, the term "public park" shall include playgrounds and other recreational facilities.

"Public safety facility improvement" means construction of new law-enforcement, fire, emergency medical, and rescue facilities or expansion of existing public safety facilities, to include all buildings, structures, parking, and other costs directly related thereto.

"Public school facility improvement" means construction of new primary and secondary public schools or expansion of existing primary and secondary public schools, to include all buildings, structures, parking, and other costs directly related thereto.

"Public transportation facility improvement" means (i) construction of new roads; (ii) improvement or expansion of existing roads and related appurtenances as required by applicable standards of the Virginia Department of Transportation, or the applicable standards of a locality; and (iii) construction, improvement, or expansion of buildings, structures, parking, and other facilities directly related to transit.

"Residentially zoned property" means property zoned or proposed to be zoned for either single-family or multifamily housing.

"Small area comprehensive plan" means that portion of a comprehensive plan adopted pursuant to § 15.2-2223 that is specifically applicable to a delineated area within a locality rather than the locality as a whole.

B. Notwithstanding any other provision of law, general or special, no locality shall (i) request or accept any unreasonable proffer, as described in subsection C, in connection with a rezoning or a proffer condition amendment as a condition of approval of a new residential development or new residential use or (ii) deny any rezoning application or

proffer condition amendment for a new residential development or new residential use where such denial is based in whole or in part on an applicant's failure or refusal to submit an unreasonable proffer or proffer condition amendment.

C. Notwithstanding any other provision of law, general or special, (i) as used in this chapter, a proffer, or proffer condition amendment, whether onsite or offsite, offered voluntarily pursuant to § 15.2-2297, 15.2-2298, 15.2-2303, or 15.2-2303.1, shall be deemed unreasonable unless it addresses an impact that is specifically attributable to a proposed new residential development or other new residential use applied for and (ii) an offsite proffer shall be deemed unreasonable pursuant to subdivision (i) unless it addresses an impact to an offsite public facility, such that (a) the new residential development or new residential use creates a need, or an identifiable portion of a need, for one or more public facility improvements in excess of existing public facility capacity at the time of the rezoning or proffer condition amendment and (b) each such new residential development or new residential use applied for receives a direct and material benefit from a proffer made with respect to any such public facility improvements. For the purposes of this section, a locality may base its assessment of public facility capacity on the projected impacts specifically attributable to the new residential development or new residential use.

D. Notwithstanding any other provision of law, general or special:

1. Actions brought to contest the action of a locality in violation of this section shall be brought only by the aggrieved applicant or the owner of the property subject to a rezoning or proffer condition amendment pursuant to subsection F of § 15.2-2285.

2. In any action in which a locality has denied a rezoning or an amendment to an existing proffer and the aggrieved applicant proves by a preponderance of the evidence that it refused or failed to submit an unreasonable proffer or proffer condition amendment that it has proven was suggested, requested, or required by the locality, the court shall presume, absent clear and convincing evidence to the contrary, that such refusal or failure was the controlling basis for the denial.

3. In any successful action brought pursuant to this section contesting an action of a locality in violation of this section, the applicant may be entitled to an award of reasonable attorney fees and costs and to an order remanding the matter to the governing body with a direction to approve the rezoning or proffer condition amendment without the inclusion of any unreasonable proffer. If the locality fails or refuses to approve the rezoning or proffer condition amendment within a reasonable time not to exceed 90 days from the date of the court's order to do so, the court shall enjoin the locality from interfering with the use of the property as applied for without the unreasonable proffer. Upon remand to the local governing body pursuant to this subsection, the requirements of § 15.2-2204 shall not apply.

E. The provisions of this section shall not apply to any new residential development or new residential use occurring within any of the following areas: (i) an approved small area comprehensive plan in which the delineated area is designated as a revitalization area, encompasses mass transit as defined in § 33.2-100, includes mixed use development, and allows a density of at least 3.0 floor area ratio in a portion thereof; (ii) an approved small area comprehensive plan that encompasses an existing or planned Metrorail station, or is adjacent to a Metrorail station located in a neighboring locality, and allows additional density within the vicinity of such existing or planned station; or (iii) an approved service district created pursuant to § 15.2-2400 that encompasses an existing or planned Metrorail station.

F. This section shall be construed as supplementary to any existing provisions limiting or curtailing proffers or proffer condition amendments for new residential development or new residential use that are consistent with its terms and shall be construed to supersede any existing statutory provision with respect to proffers or proffer condition amendments for new residential development or new residential use that are inconsistent with its terms.

2016, c. 322.